

CLEAN WATER ACT2-43. Section 404 Dredged and Fill Material Permitting**1. AUTHORITY.**

- a. To approve grants pursuant to Section 104(b)(3) of the Clean Water Act for research, investigations, experiments, training, demonstrations, surveys and studies related to development of wetlands protection programs, including those programs to issue permits for disposal and dredged or fill material (CWA § 404(g)).
- b. To review, comment on and/or object to applications for state permits in a state with an approved, assumed Section 404 permit program (CWA § 404(j)).
- c. To approve or deny state program submissions (CWA § 404(h)).
- d. To approve or deny revisions to approved state programs (CWA § 404(h)).
- e. To review and comment on U.S. Army Corps of Engineers (Corps) Section 404 public notices (CWA § 404(q)).
- f. To make final determinations of the applicability of CWA Section 404(f) (January 19, 1989 EPA/Corps Memorandum of Understanding).

2. TO WHOM DELEGATED.

- a. The authority in paragraphs 1.a. through 1.e. is delegated to the director, Water Division.
- b. The authority in 1.f. is delegated to the director, Enforcement and Compliance Assurance Division where the determination is related to an enforcement action. For other determinations, the authority in 1.f. is delegated to the director, WD.

3. LIMITATIONS.

- a. The delegated official may exercise the authority under paragraph 1.a. for research, investigations, experiments, training, demonstrations, surveys and studies having regional applicability (e.g., development of public education materials for a particular state wetlands protection program, development of wetlands evaluation techniques designed for a specific wetland type found in one region, etc.).
- b. The delegated official is delegated authority under paragraph 1.b. to transmit the consolidated federal comment on a state permit application in an approved, assumed state program. This initial comment letter transmitting the consolidated federal comment to the appropriate state permitting agency is referred to as the "A" letter.
- c. The delegated official is delegated authority under paragraph 1.b. to send letters to the appropriate state permitting agency removing an outstanding federal objection. This letter removing an outstanding federal objection is referred to as the "B" letter. Concurrence by the assistant administrator for the Office of Water or designee is

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required on the first three "B" letters in the region removing an objection to the state's permit decision, thus allowing the state to issue a permit over the objections of the Corps, Fish and Wildlife Service and/or National Marine Fisheries Service. The authority under paragraph 1.b. to send "B" letters to the appropriate state permitting agency sustaining an outstanding federal objection is retained by the regional administrator per Delegation 2-43.

- d. For permits reviewed after the concurrences in 3.c. above are complete, the region shall keep the director of the wetlands division informed about "A" letters and potential "B" letters in accordance with coordination procedures developed by the director and the regions.
- e. The delegated official must obtain the concurrence of the AA for OW, the assistant administrator for the Office of Enforcement and Compliance Assurance, and the General Counsel, or their respective designees, prior to approving state program submissions under 1.c. above. Concurrence may be waived by memorandum; however, each waiver must be authorized by the AA for OW, the AA for OECA, and the General Counsel, or their respective designees. The regional administrator is responsible for maintaining a record of any waivers of this limitation and sending a copy of the waiver to the management and organization division.
- f. Concurrence by the AA for OECA or designee is only required when these permits involve enforcement issues.

4. **REDELEGATION AUTHORITY.**

- a. The authority in paragraphs 1.a., 1.b., 1.c., and 1.d. may not be redelegated.
- b. The authority in paragraph 1.e. may be redelegated to the section chief level, or equivalent, and no further.
- c. The authority in paragraph 1.f. may be redelegated to the appropriate section chief, or equivalent, in ECAD and WD, respectively, and no further.
- d. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.

5. **ADDITIONAL REFERENCES.**

- a. 40 C.F.R. Parts 30 & 31.
- b. EPA Order 1000.23.

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- c. Memorandum of Agreement between the Department of the Army and the Environmental Protection Agency concerning the determination of the geographic jurisdiction of the Section 404 program and the application of the exemptions under Section 404(f) of the Clean Water Act, dated January 19, 1989.



Debra H. Thomas
Acting Regional Administrator

APR 29 2019

Date